

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

AMERISURE INSURANCE COMPANY,)	
)	
Plaintiff,)	
)	
v.)	CIVIL ACTION NO. 2:06-CV-1097-MHT
)	
LOWDER CONSTRUCTION)	
COMPANY, INC. and COLONIAL)	
REALTY LIMITED PARTNERSHIP,)	
d/b/a COLONIAL PROPERTIES)	
REALTY LIMITED PARTNERSHIP,)	
)	
Defendants.)	

ANSWER OF DEFENDANT COLONIAL REALTY LIMITED PARTNERSHIP

Defendant Colonial Realty Limited Partnership d/b/a Colonial Properties Realty Limited Partnership ("Colonial") answers the complaint as follows:

ANSWER

Colonial responds to the numbered paragraphs of plaintiff's complaint as follows:

1. Colonial lacks knowledge or information sufficient to form a belief as to the truth of the averments of paragraph 1 of the complaint.
2. Admitted.
3. Admitted in part and denied in part. Colonial is not a Delaware corporation, but is a Delaware limited partnership.
4. Paragraph 4 states a conclusion of law to which no response is required. To the extent a response is deemed required, Colonial reserves all applicable defenses as to jurisdiction.

5. Colonial lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 5 of the complaint.

6. Admitted.

7. Admitted.

8. Admitted.

9. Admitted.

10. Admitted.

11. Admitted.

12. For answer to paragraph 12 of the complaint, Colonial states that Lowder Construction Company, Inc. ("Lowder") breached its agreements with Colonial by failing to manage the construction of the projects in accordance with the Contract Documents and that the problems giving rising to the underlying lawsuit by Colonial against Lowder and others was a result of that failure. Because of the latent nature of some of the problems, Colonial lacks knowledge or information sufficient to form a belief as to whether any of the projects has been completed in accordance with the Contract Documents. To the extent the use of the term "completed" has some legal significance to this action, Colonial states that it lacks knowledge or information sufficient at this time to form a belief as to the truth of the allegations of paragraph 12 of the complaint and demands strict proof from plaintiff supporting this allegation.

13. Admitted.

14. Admitted.

15. Admitted.

16. Colonial lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 16 of the complaint.

17. For answer to paragraph 17 of the complaint, Colonial admits that the policy provides liability coverage as set forth therein. The terms of the policy speak for themselves and the Court is referred to the policy for a full and complete statement of its contents.

18-22. For answer to paragraphs 18 through 22 of the complaint, Colonial admits that the policy contains certain definitions, limitations, exclusions, and endorsements, all of which speak for themselves. Colonial denies that all relevant provisions of the policy are set forth in paragraphs 18 through 22. The entire policy, including all endorsements, speaks for itself and the Court is referred to the policy for a full and complete statement of its contents.

23. Colonial denies that the plaintiff is entitled to any of the relief requested in its "Prayer for Relief."

Except as expressly admitted herein, each and every allegation of the complaint is denied.

DEFENSES

Colonial asserts the following additional defenses to the plaintiff's complaint:

First Defense

The complaint fails to state a claim upon which relief can be granted.

Second Defense

The Court lacks jurisdiction over the subject matter of this action.

Third Defense

Plaintiff is bound by the terms and provisions of the policy of insurance it issued to defendant Lowder Construction Company, Inc.

Fourth Defense

Plaintiff is obligated to defend and to indemnify Lowder for any and all costs, legal fees, expenses and damages arising out of or related to the underlying lawsuit filed by Colonial against Lowder and others.

Fifth Defense

Colonial states there is no judicable controversy and that plaintiff has a duty both to defend and to indemnify Lowder for all damages arising out of or related to the underlying lawsuit which is the subject matter of this action.

/s/ Clark R. Hammond

Clark R. Hammond

/s/ David W. Proctor

David W. Proctor

/s/ William D. Jones III

William D. Jones III

Attorneys for Defendant Colonial Realty
Limited Partnership d/b/a Colonial Properties
Realty Limited Partnership

CERTIFICATE OF SERVICE

I hereby certify that on January 25, 2007, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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____/S/ Clark R. Hammond_____
OF COUNSEL